Minister's Monitoring Committee
On Workers' Compensation

Final Report of the Committee
February 2006

Background

The Minister's Monitoring Committee on Workers' Compensation (the Committee) was created in February of 2003 by the Minister of Human Resources and Employment. The Committee's terms of reference called for oversight of implementation progress on recommendations made by the Friedman and Doerksen Review Committees with a final report due March, 2005.

In December of 2004, after a Provincial General Election, the Premier appointed a new Minister of Human Resources and Employment, who added two new MLAs to the committee – including a new committee Chair. The new Committee members worked quickly to bring themselves up to speed on the interim progress reports previously done for the Committee.

Early in 2005, the Appeals Commission for Workers' Compensation (AC) and the Workers' Compensation Board (WCB) – Alberta submitted to the committee reports on progress made in the implementation of the accepted recommendations. The Committee requested that additional information be provided for the final reports of both WCB and AC as follows: In all cases, if the Doerksen or Friedman recommendations resulted in a change in policy, then the report should provide the new policy. If the Doerksen or Friedman recommendations resulted in a change in process then details of the new process should be provided, including any documentation materials used to implement the change in process.

The results of this diligence take the form of two detailed binders which include substantiating policy or process change documentation in appendices; and are attached to this Committee Summary for review. At that time, the AC and the WCB were satisfied they had fully implemented the legislative, policy and process reforms required and had done so in good faith.

The Committee accepted these reports, reviewed the information presented and the supporting documents and statistics; and agreed that for the vast majority of the recommendations the work was complete. However, the Committee of three MLAs and two members of the WCB Board of Directors felt that there were three remaining areas where enhancement was required. As a result, a time extension to the Committee's mandate was requested from the Minister of Human Resources and Employment and was granted.

Three key areas of focus

Since December, 2004 the new Committee has met on five occasions and has had ongoing discussions with Committee members, WCB executives including the President and CEO, the Chief Appeals Commissioner, the Medical Panel Commissioner, and WCB staff to deal with outstanding issues and produce improvements. Also in that timeframe, the Committee received three written interim progress updates from WCB and two updates from the Appeals Commission.

The Committee noted that despite the considerable effort and progress made on the part of the WCB and the Appeal Commission, three critical aspects of the implementation of the Doerksen and Friedman Review Committees' recommendations continued to be problematic. These were:

1. The first level of internal WCB appeal (Decision Review Body),
2. The medical review process including the Medical Panel Process, and
3. The length of time needed by the Appeal Commission to conduct hearings and render decisions.

These will be discussed in more detail along with enhancement outcomes below.

1. The first level of appeal: a change from Decision Review Body to Dispute Resolution and Decision Review Body

The Committee's Perspective

Both the Friedman and Doerksen Review Committees had contemplated an Alternate Dispute Resolution process where attempts to resolve disputes would occur ***prior*** to a formal decision being made on a claim file. From 2002 to 2004, the WCB changed its first level of appeal to the Decision Review Body (DRB) process where **decisions** could be reviewed with an emphasis on service: timeliness and decision accuracy relative to legislation and policy. This review opportunity occurs prior to an appellant's opportunity to proceed to the newly independent Appeals Commission. This change resulted in an improvement to the overall appeal process.

The Committee understands that the DRB's is making efforts at collaborative dispute resolution occur ***prior to*** a formal written decision of the DRB. However the committee suggests that further improvement may be possible with collaborative resolution efforts that would **occur *prior to*** an adverse entitlement decision by the Case Manager or Adjudicator. The Committee accepts that WCB is currently committed to this through effective case planning, but that WCB will aspire to enhancing its focus on earlier efforts at problem solving prior to a formal written decision where possible..

One concern with respect to the WCB's DRB was evident to the Committee. While the DRB process made significant strides in the number of cases that were reviewed within 45 days, a significant number of files were found to need additional information or have alternative solutions. Appeal Panels giving "Alternative Direction to the WCB" increased to 17% of cases heard as of the end of 2004. Historical levels in this category of appeal disposition were in the 8-9% range. At the same time however, the Committee is encouraged that DRB decisions overturned by the AC are 25% where historically this figure was 38%, and upheld DRB decisions by the AC are 55% from a historical rate of 49%. The WCB will study the effect of it's 45 day target and adjust it as appropriate.

Issue Resolution

Through the work of this Committee, it was agreed that the WCB would pilot a revised process from July 1, 2005 to the end of the year. This new process would more closely reflect the collaborative, alternative dispute resolution concept intended by the Doerksen Committee recommendations.

First, the name of the first level of appeal was changed to highlight the enhanced focus on collaborative dispute resolution amongst the parties to a claim file disagreement. The name sets the tone for the process and for the staff. The new name of WCB's first level of review is the Dispute Resolution and Decision Review Body (DRDRB).

The new dispute resolution procedure focuses on an initial discussion between WCB and the claimant to clarify issues of **appeal** *prior to the file being reviewed.* Having the resolution specialist talk to the client first helps ensure there is no bias in the file or issue review.

Another enhancement made through the DRDRB process is a mandatory requirement for WCB medical consultant contact with treating physicians on any review before the DRDRB where there appears to be a medical disagreement.

WCB reports to the Committee that this has been working well and that they have received positive feedback from injured workers. Workers have been particularly satisfied with the discussion of how best to resolve the issue, and the **offer of an in-person** meeting. Anecdotal feedback from stakeholders at the Alberta Labour Coalition is that they are finding the process more open and are pleased with WCB's willingness to schedule in-person hearings when requested by the worker.

WCB reports an increase in the number of cases which it has been able to resolve with the appellant. Approximately 65% of all requests for review are resolved to the worker's satisfaction. The Committee considers this a significant improvement that needs to continue.

WCB reports to the Committee that its employees are doing a better job communicating and explaining the rationale behind decisions. WCB has strived to

improve its upfront processes to avoid unnecessary disputes with injured workers. A focus on fairness, quality decision letters and successful return to work has resulted in a decrease of 16.5% on the number of new cases put forward for resolution at the DRDRB (inputs) in 2005 compared to the same time last year.

Also reported to this Committee is the resultant downstream effect of 7% fewer appeals raised to the Appeals Commission (outputs) over the last year while also seeing a healthy decline in the number of decisions overturned at the Appeals Commission from 2002.

The Committee views the DRDRB pilot results as evidence that WCB's alternative resolution process is improving. The WCB will monitor attempts to further improve the process by moving the disputes resolution ahead of adverse decisions where possible.

DRDRB pilot results

- 16.5% reduction in the number of requests for DRDRB intervention.
- 7% reduction in the number of appeals to the Appeals Commission.
- A dramatic decline in the percentage of decisions overturned at the Appeals Commission: from mid to high 30%'s historically to mid 20%'s in 2004 and 2005.
- 95% of appellants were contacted by a resolution specialist within the 5 day standard for their first resolution discussion.

The WCB has expressed confidence to the Committee that this new process is working - that having an interactive internal review process is the most expedient approach to managing appeal volume, catching any case management mistakes on benefits or other entitlement and getting timely decisions to injured workers.

2. Claim File Medical Resolution among Physicians

The Committee's Perspective

The second area of concern deals with instances on claim files where there is not agreement between WCB medical staff and the injured worker's treating physician. The Committee felt more could be done to improve the interaction between WCB and the doctors who treat injured worker.

Issue Resolution

The Committee worked with WCB and gained their commitment to enhance the focus on attempting to resolve outstanding medically-related disagreement on fitness to

work, diagnosis, treatment plan or causation. Part of the challenge facing the WCB was a historical reluctance on the part of treating doctors to enter into discussion with WCB medical consultants. In short, past efforts to by WCB medical consultants to contact family physicians resulted in return phone calls in only 25% of instances.

To make dialogue more attractive to busy physicians, WCB updated its fee guideline to allow treating physicians to be **paid** to return WCB medical consultants' calls. This incentive should increase the likelihood of contact with the community physician in cases of medical disagreement. Significant progress on this front has been recorded as noted by the count of successful community physician contacts.

In 2005, there was a 58% increase in the number of conversations WCB medical consultants had with community physicians over 2004 (1,130 conversations in 2004 vs. 1,787 in 2005) and a 68% increase in total calls made (1,554 calls in 2004 vs. 2,612 in 2005).

The result has been significant. Approximately 85% of these disagreements have been resolved through a discussion with a WCB medical consultant. The WCB reports that focus on improving the level of personal contact between WCB medical consultants and community physicians when there is a difference in medical opinion is gaining momentum.

Enhanced Focus on Medical Resolution Pilot Results

- 58% increase in the number of *conversations* our internal medical consultants had with community physicians over 2004 (1,130 conversations in 2004 vs. 1,787 in 2005).
- 68% increase in total calls *attempted* by internal WCB medical consultants to community physicians (1,554 conversations and attempted calls in 2004 vs. 2,612 in 2005).
- 85% of medical disagreements that reach the DRDRB have been resolved through a discussion with a WCB medical consultant.
- 89% of resolutions were complete within 40 days -- up from 83% in 2004.

Newly Independent Medical Panel Process

The original work of the Doerksen committee prompted legislative amendments in 2002 revising the medical panel process for resolving bona fide conflicts of medical opinion. Bona fide conflicts of opinion are rare, and are what is left over when these day-to-day attempts at medical resolution do not achieve consensus. Because the Committee was sensitive to the perception of independence of the WCB Medical Panel process, in the fall 2005 sitting of the Legislature (at the Committee's prompting) Government amended the Workers' Compensation Act to move the administrative functions of the Medical Panel process outside of the WCB. The Medical Panel Commissioner now reports directly to the Minister of Human Resources and Employment.

3. Timeliness of hearings and decisions at the independent Appeals Commission

The Committee's Perspective

The average number of days taken by the Appeals Commission to deliver a decision is considered excessive when compared to the process contemplated by the Doerksen and Friedman review committee recommendations.

As a result of the Doerksen and Friedman Review Committees, significant steps were taken to ensure the independence of the Appeals Commission by establishing them as a government entity independent of the WCB. Within this framework the review committees examined the numbers of appeals on-hand at the Appeals Commission and the length of time to process an appeal through the appeal process. The committees contemplated an appeal process that would reduce the number of days taken to process an appeal.

Issue Resolution

The Committee has worked with the Appeals Commission to address the expectations of the appeal process regarding both the workload of appeals and the timelines for processing appeals.

The Committee is mindful that the Appeals Commission is the final level of appeal. For this reason the Committee is supportive of the practice of the Appeals Commission to conduct oral hearings in approximately 90% of appeals and in over 95% of appeals to have the appeal decided by a panel of three commissioners. The Committee recognizes that other practices such as single adjudicators and written submission hearings might reduce processing times however the Committee would not support pursuing these alternatives given the positive reporting on the present processes.

The Appeals Commission has indicated to the Committee that additional hearing chairs and appeals commissioners were added as of May 1, 2005 to address the appeal workload and the processing timelines. Additional staff has also been added. The effect of these additional resources is now evident and the Committee is encouraged by the reports of the Appeals Commission that the number of hearings conducted and the number of appeals concluded has increased significantly each year since 2002/2003. The Committee views these trends as positively as they have resulted in more appeals being completed than the number of appeals being received during the period from April 1, 2004 to December 31 of 2005. The Committee recognizes this is having a positive impact and there will continue to be a positive impact on the number of appeals before the Appeals Commission and on the timelines required to process an appeal.

The Appeals Commission also reports to the Committee that the number of appeals on file has been reduced from a high of 1239 appeals in 2004/05 to the present number of approximately 1125 appeals. It is significant that the Appeals Commission reports that:

- approximately 30% of the appeals on file have been adjourned at the request of appellants, as they are not ready to proceed with the processing of the appeal
- approximately 135 of the 775 active appeals have already been heard and are in the process of decision-making and preparing the decisions
- approximately 285 of the 775 active appeals have a hearing date set and will be heard in the near future.

Appeals Commission Submission to Minister's Monitoring Committee Workers' Compensation

Statistical Information

DRDRB Statistics

	2002	2003	2004	2005	2006
DRB Decisions Issued	3857	4438	4184	3716	3716

Appeals Commission-Appeals Received

	2002/03	2003/04	2004/05	2005/06	2006/2007
Appeals Received	1152	1344	1333	1177	1177
% of DRB Decisions	30%	30%	32%	32%	32%

Appeals Commission – Appeals Processed

	2002/03	2003/04	2004/05	2005/06	2006/2007
Hearings Conducted	748	872	1111	1134	1300
Appeals Concluded	787	855	1087	1193	1300
Appeals Withdrawn	133	144	198	110	100
Total Concluded	920	999	1285	1303	1400
Appeals on file at year-end	859	1197	1239	1100	900
Time to Process-Standard Appeal	173 days	191 days	225 days	218 days	180 days

Outcome of Issues					
Upheld	49%	57%	56%	55%	
Overturned	40%	28%	23%	25%	
Alternate Decision	7%	11%	17%	16%	
Partially Overturned	4%	4%	4%	4%	
Total Overturned	51%	43%	44%	45%	

Denotes Projected

Appeals Commission – On file Appeal Workload

Total Appeals on file	1128		Remaining Active Appeals
Adjourned by the appellant	350	31%	778
Already heard & being finalized	135	12%	643
Hearing date has been set	286	25%	357
Active appeals in processing	357	32%	

The Committee views this as a positive indication that there is currently no significant backlog of appeals. The Committee considers the number of active appeals before the Commission to be reasonable and the Committee is satisfied the Commission is showing steady improvement towards efficiently managing this active appeal workload.

Continuous Improvement

The WCB has instituted a number of internal processes that monitors the quality of the services provided to injured workers, the quality of it's decisions and the quality of the work done by it's external consultants and contractors. The committee is encouraged by the WCB's willingness to continue to look for new ways to provide continuous Improvement in their processes and in customer satisfaction.

The Appeals Commission reports that they are continuing to review and implement administrative processes to ensure they contribute positively to an effective and timely processing of appeals. The Appeals Commission reports they are amending processes to actively manage the adjournment process: that they are ensuring the readiness of parties to proceed; and that they are amending the process to more effectively schedule hearings and more accurately record responsibility for processing times. The Appeals Commission actively communicates with the WCB on appeal results as well as ongoing opportunities to streamline the process. The Committee supports this approach to continuous improvement

Conclusion

The Ministers' original Monitoring Committee on Workers' Compensation met on 15 separate occasions in pursuit of its mandate to "monitor the changes to the workers' compensation system" made through implementation of the Bill 26, 2002 and other approved initiatives pursuant to the two MLA Service and Appeals Systems Review Committees Reports. The committee is resolute in its confidence that reforms have been, and continue to be, made in good faith by Human Resources and Employment, the Appeals Commission and the Workers' Compensation Board.

Two significant new processes internal to WCB – DRDRB and the enhanced Medical Resolution Process -- that came from the review committees and the legislative amendments, along with all of the public and stakeholder consultation that accompanied this journey are still relatively young programs from an operational standpoint; however, they have moved the organization in the right direction. Likewise, operating procedural

changes by the newly independent Appeals Commission and Medical Panel Process, appear to be progressing as intended.

The monitoring exercises of this committee have provided a high level of confidence that both the spirit and the specifics of these commitments are being fulfilled. The Committee is satisfied that the WCB's new Accountability Framework and the ongoing scrutiny of same by the independent Office of the Auditor General will serve the fair and effective evolution of the workers' compensation system in Alberta very well. At the committee's request, WCB will appear annually at government's Standing Policy Committee on Education and Employment and report ongoing improvements. This final report of the Committee and attachments provides documentary evidence that the changes have indeed been carried out and that continued monitoring provided improvements to the process.

The Committee has worked diligently with both the Appeals Commission and the WCB in its oversight capacity and has been impressed by the good faith commitment shown towards continuous improvement. The Committee is convinced that the desire of both organizations is to move forward from good to great.

Many thanks accrue to all members of the Committee as well as senior members of the WCB and the Appeals Commission for going the extra mile on the remaining issues.

Denis Herard, MLA, Calgary Egmont Constituency - Chair
Mary Anne Jablonski, MLA, Red Deer North Constituency
Lloyd Snelgrove MLA, Vermilion-Lloydminster Constituency

John Hokanson, WCB Board of Directors members
Mark McCullough, WCB Board of Directors members